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September 17, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

RE: In the Matter of Federal State Joint Board on Universal Service  
CC Docket No. 96-45; DA 99-1535

Dear Ms. Salas:

Enclosed for filing are an original and four copies of the Reply Comments of the Washington Utilities and Transportation Commission. This document was electronically filed with the ECFS site on September 17, 1999.

Please contact Tom Wilson at (360)-664-1293, [tomw@wutc.wa.gov](mailto:tomw@wutc.wa.gov), if you have any questions about this filing.

Sincerely,

  
JEFFREY D. GOLTZ  
Senior Assistant Attorney General

JDG:kll  
Enclosure

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Federal State Joint Board on  
Universal Service

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CC Docket No. 96.45

DA 99-1535

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FEDERAL COMMUNICATIONS COMMISSION  
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**REPLY COMMENTS  
of the  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
September 17, 1999**

**Washington Utilities and Transportation  
Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504  
(360) 664-1293**

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## Introduction

The Washington Utilities and Transportation Commission (WUTC) offers these reply comments to refocus the debate on the first principles set out in the Telecommunications Act of 1996 (1996 Act): preserving and advancing universal service, facilitating competition, reducing regulation and prices, increasing service quality and encouraging rapid deployment of new technologies. These principles should guide the Commission and states as they consider the complexities inherent in making substantial and far-reaching regulatory and de-regulatory changes, whether those complexities result from ever-changing technological capabilities or from legislation that “is in many respects a model of ambiguity or indeed even self-contradiction.”<sup>1</sup>

The WUTC has generally encouraged competition in the telecommunications markets subject to its jurisdiction. At the same time, the WUTC gives equal weight to the critical goal of preserving and advancing universal service in Washington. This proceeding is an opportunity for the FCC to provide broad policy guidance on issues identified by our comments. This guidance, however, must respect state authority provided for under the 1996 Act. There is substantial diversity of economic and market characteristics across the nation’s more than 1,000 rural telephone companies. Congress was clear that *states* should determine the public interest in permitting multiple eligible telecommunications carrier (ETC) designations under Section 214(e) and interconnection under Section 251(f). In making those determinations, the commissions in

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<sup>1</sup> *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721, 738 (1999).

each individual state are in the best position to understand the circumstances facing rural telephone companies and consumers.

**Specific Comments:**

The WUTC offers comments on the following issues raised by the Petition:

1. State designation of ETCs prior to the provision of service;
2. State-imposed criteria on eligibility;
3. Support for local usage; and
4. Universal service and investment in rural infrastructure.

The policy issues and recommendations presented in these comments are consistent with our belief that properly implemented, competitive reforms can be beneficial to both the industry and consumers. However, the ultimate decision regarding whether allowing more than one carrier to be designated as an ETC in an area served by a rural telephone company is in the public interest remains at the discretion of state commissions.

**1. State Designation of ETCs Prior to the Provision of Service**

Competitive entry requires that states be able, if not required, to designate ETCs prior to the provision of service in the geographic area (service area) where the new entrant plans to compete using support to defray the cost of providing service. In many rural areas the cost of providing service is often \$50.00 to \$100.00 dollars per month and may go as high as \$400.00 to \$500.00 per line.<sup>2</sup> Competitive entry simply will not occur if a carrier must invest in plant and

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<sup>2</sup> In Washington, the highest estimated cost for providing service as determined on a forward looking basis through the use of a proxy model for an exchange operated by other than an independent carrier is \$476.21. See WUTC Docket No. UT-980311, Tenth Supplemental Order, November 20, 1998.

equipment in such an area prior to knowing if it will be designated an ETC. A company that made such an investment and did not receive ETC status would have to offer local service at rates five to fifty times greater than the incumbent ETC and any other ETCs. Only if ETC status can be secured prior to investment will it be prudent to invest in high-cost locations.

ETC designation prior to provision of service does not mean that a carrier will receive support without providing service or without the obligation to provide service to any applicant within the geographic service area for which it is designated. Support should only flow to the ETC when lines are put in service. Once lines are put in service through use of its own facilities, acquired unbundled network elements, or resale, the ETC should be required to respond to any request for service from any portion of the service area using any combination of the three types of these service options. If the carrier is unable to meet requests, or if it appears to honor requests in the low-cost portion of the service area and shun them in the high-cost portion, then the ETC should be subject to sanctions, including possible loss of its ETC status.

ETC designation prior to the provision of service is consistent with the Act. Section 214(e)(1)(A)<sup>3</sup> requires that an ETC “offer the services that are supported by federal universal service support mechanisms...” One can offer what one does not have immediately available. This is the case in many areas of commerce. The buying and selling of commodities is one example, but a more apt one is construction. When a company or family wants a new building or house, contractors do not usually have them already constructed, rather they agree to build what

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<sup>3</sup> 47 U.S.C. § 214(e)(1)(A).

the customer wants. The same is true for the provision of new telephone service where customers contact a carrier, put in an order, and expect it to be filled in a reasonable time.

A better analogy for ETC designation is the registration of telecommunications companies. All states have some form of registration or certification program for companies entering the state for the first time. The carrier applies for authority to do business in the state and makes certain representations that it will abide by the state laws and rules that govern telecommunications. The registration or certificate is then granted or denied. Only after the application is granted can the carrier begin to serve customers; states would not tolerate carriers entering first and then requesting permission to operate. States should treat ETCs in a similar fashion by having them seek the designation first, make appropriate representations, and confirm adherence to those representations when support payments are requested. Only if the representations are not met should the carrier be subject to state action that might prevent receipt of support. A carrier that has ETC designation can make investment and proceed at its own pace prior to actually providing service to the first supported customer, at which time it would have the obligation to meet all applications for service in the geographic area for which it has been designated. We offer this as a reasonable approach that will encourage entrance to high-cost markets and the consequent deployment of new technologies.

## **2. State-Imposed Criteria on Eligibility**

The WUTC believes that, properly implemented, the opening of local markets to competitors will have beneficial effects for both consumers and the industry. Along with policy and regulatory reforms necessary to open local markets comes a corresponding obligation to

implement additional reforms necessary to preserve and advance universal service. For example, the FCC recently approved a joint proposal by the WUTC and every rural telephone company in Washington for disaggregating embedded federal universal service support for rural telephone companies down to the sub-wire center level.<sup>4</sup> Disaggregating support in this manner facilitates easier entry by competitors. It also discourages uneconomic “cherry picking” of the best customers, which ultimately could undermine universal service.

State-imposed criteria on eligibility should not act to keep a carrier from crossing the threshold of designation, but rather provide standards to be met by any carrier acting as an ETC and requesting and receiving support. Like the analogy above to registration, states should test the adherence to the criteria not in the abstract, but only after service is provided and support requested.

Washington has imposed service quality criteria on ETCs designated in 1997.<sup>5</sup> The markets in Washington where competitively and technologically neutral support may one day be offered are not yet so robust that market forces alone can ensure high-quality service. Other states may want to have similar criteria and should be permitted to impose them if they do not retard or act as a barrier to competitive entry.

Criteria imposed by states should be technologically neutral as well as competitively neutral. States should not, for example, impose standards from one technology on another one.

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<sup>4</sup>See FCC Memorandum, Opinion and Order, DA 99-1844, CC Docket No. 96-45, (September 9, 1999).

<sup>5</sup> See Order Designating Eligible Telecommunications Carriers, Docket Nos. UT-970333-54 and UT-970356, Washington Utilities and Transportation Commission (December 23, 1997).

Call-completion by wireline carriers, for example, should not be compared to call-completion of cellular carriers, with cellular carriers found wanting. Rather, customers should be able to choose one or both technologies, using their differences to aid in the choice. A customer who needs reliability, such as an individual with severe health problems, will make the choice of the carrier with the best call-completion record. The customer who sells real estate and wants mobility bundled with basic service may eschew the call-completion capability of wireline service for less reliable, but mobile cellular service. Differences in the provision of service need not necessarily be cast as a quality issue so much as an opportunity for product differentiation in a competitive market.

The Fifth Circuit Court of Appeals recently found that states are not prohibited by the 1996 Act from imposing their own eligibility requirements on carriers.<sup>6</sup> Because one carrier's quality of service issue may be another carrier's barrier to entry, the FCC should permit states to impose criteria on eligibility but should provide guidelines which states may follow so as to not impede entry into markets.

### **3. Support for Local Usage**

Determination of the amount of support for local usage should be left to the states, but should be applied in a way that does not create barriers to entry. Many states require wireline carriers to offer monthly, flat-rate service. It does not follow that flat-rated usage is the only level of service for which universal service support is appropriate under the FCC rules. Cable television, which is capable of providing telephony, has long been sold on a monthly, flat-rate

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<sup>6</sup>*Texas Office of Public Utility Counsel v. FCC*, 183 F.2d 393, 417 (1999).



basis, but cellular and satellite telephony have almost exclusively been sold on a per-minute basis. Washington does not interpret the requirement for support for local usage as a requirement for one-size-fits-all regulation. Universal service support should not limit customer choice but rather should encourage product differentiation. If the FCC expands upon its direction in this area, it should be to require states to make full and complete records when determining the level of support for local usage, so that any challenge to the reasonableness of a decision can be dealt with expeditiously.

#### **4. Universal Service and Investment in Rural Infrastructure**

With the passage of the 1996 Act, Congress made a fundamental shift in our nation's telecommunications policy, and a fundamental promise. The shift was a removal of legal restrictions to local competition. The promise was that universal service would not be harmed by competition. With respect to areas served by rural telephone companies, Congress gave state commissions specific authority, including the responsibility to determine if petitions for designation as an ETC or for interconnection are in the public interest.

The fundamental purpose of the 1996 Act was to promote investment by both incumbents and competitors in our nation's telecommunications infrastructure. We believe investment in rural telecommunications infrastructure requires both sufficient universal service support and the opening of local markets where state commissions find that it is in the public interest. State commissions are, as Congress saw, closest to the issues at hand in this case.

## Conclusion

The FCC has the opportunity now to provide guidance on what should be required of states to make full and complete records when determining whether to allow more than one ETC in an area served by a rural telephone company. The WUTC would view such guidance as helpful and consistent with our desire to implement policies which ensure that both incumbents and competitors will invest in telecommunications infrastructure serving our rural communities.

DATED at Olympia, Washington, and effective this 17<sup>th</sup> day of September, 1999.

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
WILLIAM R. GILLIS, Commissioner

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